

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )

Access Charge Reform )

Reform of Access Charges Imposed by )  
Competitive Local Exchange Carriers )

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CC Docket No. 96-262

**REPLY COMMENTS OF THE  
ASSOCIATION OF COMMUNICATIONS ENTERPRISES**

The Association of Communications Enterprises (“ASCENT”), through undersigned counsel, hereby replies to the comments of other parties on the *Further Notice of Proposed Rulemaking*, FCC 01-146, released in the captioned proceedings on April 27, 2001 (“*FNPRM*”).

All commenters other than Sprint Corporation (“Sprint”), WorldCom, Inc. (“WorldCom”) and AT&T Corp. (“AT&T”) (collectively, the “IXC Commenters”), generally concur with ASCENT that 8YY toll-free traffic should be subject to the same benchmark scheme as other categories of interstate switched access charges. The IXC Commenters, on the other hand, urge the Commission to immediately reduce access charges levied by competitive local exchange carriers (“LECs”) for originating 8YY traffic to the rates charged by the incumbent LEC serving the area. The principal concerns voiced by the IXC Commenters involve the assessment by competitive LECs of inflated charges for originating 8YY traffic and/or the engaging in abusive toll dialing schemes to artificially elevate payment under revenue-sharing arrangements.

ASCENT is not unsympathetic to the desire of the IXC Commenters to see access charges associated with the origination of 8YY traffic reduced in those cases where such access

charges constitute “supra-competitive rates for switched access”.<sup>1</sup> However, as the comments point out, the Commission has already acted to ensure that such “supra-competitive” rates will not occur. Through the *Seventh Report and Order* accompanying the *FPNRM*, the Commission “immediately provided IXCs with relief from the substantially higher rates that many CLECs have been tariffing,”<sup>2</sup> transitioning to a benchmark rate which “will permit CLECs initially to tariff rates for their switched access service of up to 2.5 cents per minute, or the rate charged by the competing incumbent LEC, whichever is higher.”<sup>3</sup> Thus, in large measure, the *Seventh Report and Order* has already remedied a major aspect of the IXC Commenters’ concerns by ensuring that CLECs may not impose “supra-competitive” rates for originating 8YY traffic.

ASCENT is even more sympathetic to the IXC Commenters’ apprehension about fraudulent activity. However, the more measured approach to dealing with such abuses would be for the Commission to continue to address allegations of abusive or deceptive toll-free calling schemes by means of specific enforcement actions. In this manner, those entities which violate the Commission’s rules and regulations – and only those entities -- will bear the consequences for their own actions. This is preferable to the approach advocated by the IXC Commenters which, while well-meaning, would nonetheless impose significant and unwarranted economic hardship (in order to remedy the harm caused by only these few private actors) over the entire universe of carriers originating 8YY traffic.

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<sup>1</sup> Comments of AT&T, p. 1.

<sup>2</sup> Reform of Access Charges Imposed by Competitive Local Exchange Carriers (Seventh Report and Order and Further Notice of Proposed Rulemaking), CC Docket No. 96-262, FCC 01-146 (rel. April 27, 2001) ¶ 61 (“*Seventh Report and Order*”).

<sup>3</sup> Id., ¶ 45.

ASCENT wholeheartedly agrees that abuse of 8YY traffic generation, either within or outside the context of revenue sharing arrangements, must be rectified by the Commission. That having been said, however, ASCENT continues to urge the Commission to recognize that the appropriate vehicle for investigating and resolving allegations of such abuse is “a complaint-based approach [which] will eliminate abuses without imposing an unwarranted penalty on all CLECs to resolve the abuses of no more than a few.”<sup>4</sup> This approach would attain more equitable results, and would do so without the damaging effects to competition which would almost certainly accompany a more drastic or more rapid reduction in access charges for 8YY traffic than the *Seventh Report and Order* mandates for all other CLEC traffic.

With respect to the IXC Commenters’ concerns regarding revenue-sharing arrangements as a device to artificially increase the rate at which 8YY traffic is generated by large users such as hotels and universities, ASCENT agrees with those commenters which observe that revenue-sharing arrangements will rarely be the determinative factor in the use of toll-free services by such entities. As the Association of Telecommunications Professionals in Higher Education (“ACUTA”) notes, there are numerous “factors which lead to the generation of toll free traffic on a college campus, which are completely unrelated to contractual revenue-sharing arrangements with CLECs or other carriers.”<sup>5</sup>

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<sup>4</sup> Comments of Minnesota CLEC Consortium, p. 3.

<sup>5</sup> Comments of ACUTA, p. i.

Universities, ACUTA points out, “are generally considered “aggregators . . . therefore, universities are required to make alternative operator services available to their students through toll free dial around.”<sup>6</sup> Indeed, the popularity of toll-free access as a means to satisfy student telecommunications needs is highlighted by ACUTA’s observation that at just one member institution, “2000 students on any given day” – 50% of the undergraduate population – “are dialing around the University-provided long distance programs. Most of these dial-around calls are made using toll free access numbers.”<sup>7</sup> Not simply the province of higher education, with increasing frequency, parents of secondary boarding school students are being provided – and taking advantage of – the option to acquire a personal toll-free telephone number to facilitate completion of calls home without charge to the student.<sup>8</sup>

The fact that toll-free access calls are generated in large number by universities and hotels does secure for such entities the status of highly prized (and hard fought for) customers. Fulfilling the 8YY calling needs of such entities naturally will remain a high priority of telecommunications carriers who have won those customers. That does not, however, indicate a nefarious intent to engage in improper dialing pattern schemes. As the Rural Independent Competitive Alliance (“RICA”) observes, “there is nothing improper about a CLEC, ILEC or IXC attempting to obtain customers which generate high volumes of traffic.”<sup>9</sup> U.S. TelePacific Corp.

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<sup>6</sup> Id., p. 2.

<sup>7</sup> Id.

<sup>8</sup> The Hargrave Military Academy “Personal 800 Number” program, offered for the first time in September 2000, is an example of one such program found beneficial by both parents and students.

<sup>9</sup> Comments of RICA, p. 3.

agrees, pointing out that “[a]ggregator arrangements are not new and should not be singled out for different treatment.”<sup>10</sup>

And as ASCENT pointed out in its comments, the competitive LEC 8YY revenue sharing arrangements of which AT&T complaints do not constitute unlawful rebates and therefore, would appear to be lawful. ASCENT, accordingly, agrees that there is “no basis for adopting an alternative pricing regime for this type of traffic[, s]ingling out some of the largest generators of access traffic (and thus large customers that are among the most important to CLEC business plans)” for the more stringent access charge reductions sought by the IXC Commenters. Indeed, such an alternative pricing scheme for 8YY traffic would work against the Commission’s determination that “a gradual reduction in CLEC access rates is necessary to allow CLECs to adjust their business to the new regulations.”<sup>11</sup>

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<sup>10</sup> Comments of U.S. TelePacific Corp., p. 2. *See also* Comments of Time Warner Telecom, p. 2. (“high volume alone is no basis for adopting an alternative pricing regime for this type of traffic.”)

<sup>11</sup> Comments of Time Warner Telecom, p. 2.

The comments confirm that originating access for 8YY traffic generation is not distinguishable from any other form of traffic. Thus, there appears to be no rationale upon which disparate treatment of competitive LEC originating 8YY traffic could logically be premised. ASCENT agrees that “there is no economic cost justification for mandating that CLECs price 8YY services lower than their rates for other access services”<sup>12</sup> and “no reason why the same level of tariff benchmarks should not apply to CLEC traffic originated by an end-user to a toll-free 8YY number.”<sup>13</sup> Moreover, in establishing the CLEC access charge benchmark mechanism, the Commission specifically found that “this type of transitional mechanism is vitally important to avoid too great a dislocation in the CLEC segment of the industry.”<sup>14</sup> This concern is no less compelling with respect to competitive carriers serving customers such as hotels and universities, which generate significant 8YY traffic. In light of the Commission’s conclusion that a “flash cut [to the competing ILEC rate] likely would be unduly detrimental to competitive carriers,”<sup>15</sup> ASCENT cannot support, and urges the Commission not to adopt, a proposal which would slash 8YY access rates more severely or more immediately than called for by the *Seventh Report and Order’s* benchmark mechanism.

Consistent with the foregoing, the Association of Communications Enterprises renews its request that the Commission refrain from treating 8YY toll-free traffic originated by competitive LECs no differently than other forms of originating switched access services for access

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<sup>12</sup> Comments of Association of Local Telecommunications Services, p. 2.

<sup>13</sup> Comments of U.S. Telepacific Corp., p. 3.

<sup>14</sup> Id., ¶ 62.

<sup>15</sup> *Seventh Report and Order*, ¶ 45.

charge benchmarking purposes and continue utilizing existing complaint procedures to address allegations of violations of the Commission's rules and regulations.

Respectfully submitted,

**ASSOCIATION OF COMMUNICATIONS  
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